

AO 91 (Rev. 02/09) Criminal Complaint

United States District Court

for the
Western District of New York

United States of America

v.

Case No. 24-MJ-95

JOHN W. BURNS

Defendant

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about June 17, 2024, in the County of Erie, in the Western District of New York, the defendant, JOHN W. BURNS, did maliciously damage and destroy, and attempt to damage and destroy, by means of fire, a building and real property used in interstate commerce and in activity affecting interstate commerce, namely a restaurant and bar located at 223 Allen Street, Buffalo, New York, all in violation of Title 18, United States Code, Section 844(i).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.



Complainant's signature

ROBERT GRUNDER
Special Agent
Bureau of Alcohol, Tobacco, Firearms and Explosives
Printed name and title

Sworn to and signed telephonically.

Date: September 5, 2024.



Judge's signature

City and State: Buffalo, New York

HONORABLE H. KENNETH SCHROEDER
UNITED STATES MAGISTRATE JUDGE
Printed name and title

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

ROBERT GRUNDER, being duly sworn, deposes and says:

1. I am a Special Agent of the Bureau of Alcohol, Tobacco, Firearms and Explosives ("ATF") of the United States Department of Justice. As such, I am an "investigative or law enforcement officer of the United States" within the meaning of 18 U.S.C. § 2510(7), that is, an officer of the United States who is empowered by law to conduct investigations of and to make arrests for offenses enumerated in 18 U.S.C. § 2516.

2. I have served as an ATF Special Agent for approximately 19 years. During that time, I have participated in investigations involving violent crime, drug trafficking, and arsons. In addition, I have had the opportunity to work with other ATF agents and other law enforcement agents and officers of varying experience levels, who have also investigated arsons, in the Western District of New York. My investigative experience detailed herein, and the experiences of other law enforcement agents, who are participating in this investigation, serve as the basis for the opinions and conclusions set forth herein.

3. Your Affiant states that this investigation was conducted by the Buffalo Fire Department ("BFD") and the ATF Buffalo Field Office. Your Affiant is fully familiar with the facts and circumstances of this investigation, such familiarity having been gained through: your Affiant's personal knowledge based upon your Affiant's participation in this

investigation; statements by and/or reports provided to your Affiant by law enforcement personnel of the BFD; and information provided by civilian sources, consensual recordings, information learned through a review and analysis of phone records and information related to subjects of this investigation, interviews of various individuals believed to be associated with the subject of the investigation, records checks of various public and law enforcement data bases, and other investigative techniques.

4. Your Affiant makes this affidavit in support of a Criminal Complaint charging **JOHN W. BURNS** with violating Title 18 U.S.C. Section 844(i), that is, that he maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire or an explosive, a building used in interstate or foreign commerce.

5. The ATF and the Buffalo Fire Marshal's Office conducted an investigation into a fire that took place at 223 Allen Street, Buffalo, New York, on June 17, 2024, a location known as "The Old Pink." Your Affiant believes probable cause exists that **BURNS** intentionally started the fire at The Old Pink and had planned to do so approximately two (2) hours before the start of the fire.

6. On June 17, 2024, at approximately 5:36 a.m., the Buffalo Fire Department responded to a structure fire at The Old Pink, which was a bar/restaurant. The BFD received a call at approximately 5:32 a.m. that the 2.5 story building was on fire. During the course of the investigation, law enforcement obtained video evidence of the origin of the fire. The video was obtained by Buffalo Fire Investigators from employees of The Old Pink. The video

recording shows an individual near the origin of the fire. The individual cannot be identified from the video alone but appeared to be wearing dark clothing. Specifically, the individual was wearing a dark colored jacket with a hood. Some sort of emblem appeared on the left arm of the jacket. During this time, the hood was on the individual. The individual is also seen wearing pants and sneakers that appear to be green and white in color.

7. In the video, it appears that the individual started the fire with the use of a light blue propane-plumbers torch. During their investigation, BFD Fire Investigators recovered a light blue propane-plumbers torch in the area near the origin of the fire. Buffalo Fire Investigators submitted the torch to the Erie County Central Police Services Forensic Laboratory for DNA examination. The result indicates that the swab of the torch cylinder and the swab of the nozzle are not suitable for comparison because an insufficient amount of DNA was obtained from the extracts of these items.

8. The video evidence further revealed that, prior to the fire starting, the individual can be seen looking through the garbage totes behind the building near the area where the fire started. The individual also appeared to carry two white garbage bags to the back of the building prior to the fire starting. At approximately 5:21:35 a.m., the individual is seen on the video walking away from the area of origin. Approximately 20 seconds later, what appears to be a reflection of fire on the air conditioner unit can be observed. A short time later, a visible fire can be seen on the video.

9. During the course of the investigation, information was obtained that **BURNS** was at The Old Pink earlier in the evening. In sum and substance, BFD learned that **BURNS**

had a confrontation at The Old Pink with another individual formerly contracted to work security for the Old Pink. That individual informed your Affiant that, although he did not know **BURNS** by name, he recognized him from his time as security at The Old Pink. The former security guard stated that, on the evening of June 17, 2024, he had confronted **BURNS** after a number of female patrons came to him complaining about **BURNS'** behavior. The former security guard asked **BURNS** to leave, at which time **BURNS** attempted to fight him. The former security guard slapped **BURNS**, knocking him over. **BURNS** then told the former security guard: "I'll be back motherfucker" and "I'll burn that bitch down" and "Ain't nobody going to have a job."

10. As part of the investigation, your Affiant reviewed the security footage of the fight at The Old Pink with The owner of the Essex St. Pub, another restaurant located at 530 Rhode Island Street, Buffalo, New York. The owner identified the person who had the confrontation with the security guard as **BURNS**. The owner recognized **BURNS** because he used to employ **BURNS** at the Essex St. Pub.

11. Your Affiant reviewed the security footage with two associates of **BURNS**, both of whom identified **BURNS** as the individual walking away from The Old Pink shortly after the fire began.

12. On August 27, 2024, law enforcement interviewed one of the aforementioned associates. The associate provided text messages to law enforcement he received from **BURNS** in the early morning hours of June 17, 2024. After describing what appeared to be

the fight at The Old Pink, **BURNS** stated, "Guerrilla mode on" and "Guerrilla BuffL9 is a go." The following conversation between **BURNS** and the associate continued:

BURNS: Bail me out if I don't call you at noon. Therz a fund.

Time Stamp Mon, June 17 at 5:57 a.m.

Associate: You're killing me bro trying to sleep

Associate: What is going on

BURNS: Nothing. Made my bed. Gonna defend it to the death at this point

Associate: See that is the problem and I have no idea what you're talking about. You don't give me any details you just say things. what are you talking about? What bed what are you doing? What happened?

BURNS: Call or signal. Text bad

BURNS: Whatever they probably a footage

BURNS: Really though I can't just say all the things that will later be investigated here

BURNS: I'm going to the er....


These text messages took place immediately before and after the fire at The Old Pink. In my training and experience, and based on my conversation with other law enforcement officers, I believe that **BURNS** is describing having set the fire at The Old Pink. Notably, when asked by the associate what had happened, **BURNS** told the associate to use an encrypted app (signal) or to call. He followed that up by recognizing that "they" probably had footage of what he had done, and that it would later be investigated. These statements are all consistent with the fact that **BURNS** had just set the fire at The Old Pink.

13. On August 13, 2024, at 6:03 a.m., **BURNS** was observed on video setting a fire in the parking lot of the Essex St. Pub. The fire was quickly extinguished by fire department

members. Buffalo Fire Marshals examined the scene and determined that the origin of the fire was a pile of books that had been placed near a vehicle. The vehicle was parked in the Essex St. Pub parking lot near the bottom of the egress to the fire escape.

14. The owner of the Essex St. Pub informed BFD that the fire debris was located next to his personal vehicle, and that he had received a text message from the night prior to the fire that **BURNS** had been denied entry to the pub due to disruptive behavior. BFD reviewed the video footage from the Essex St. Pub security cameras with the Essex St. Pub owner, who identified **BURNS** as the person in the video who can be seen carrying a pile of books in his arms towards the rear parking lot of the Essex St. Pub, lighting the books on fire, and subsequently departing the area.

WHEREFORE, probable cause exists to believe that **BURNS** has violated Title 18 U.S.C. Section 844(i), in that he maliciously damaged and destroyed, and attempted to damage and destroy, by means of fire or an explosive, a building used in interstate or foreign commerce.



ROBERT GRUNDER
Special Agent
Bureau of Alcohol, Tobacco, Firearms and Explosives

Sworn to before me
telephonically This 5th day of
September 2024



HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE